



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,488	04/11/2001	Akifumi Nakada	954-007861-US (D01)	1276
2512	7590	10/05/2009		
Perman & Green, LLP 99 Hawley Lane Stratford, CT 06614				
EXAMINER				
BHATIA, AJAY M				
ART UNIT		PAPER NUMBER		
2445				
MAIL DATE		DELIVERY MODE		
10/05/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AKIFUMI NAKADA, HAJIME TSUCHITANI,
OSAMU FURUSAWA, and TOSHIHIKO ZUZUKI

Appeal 2008-000843
Application 09/832,488
Technology Center 2400

Decided: October 5, 2009

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

In a paper filed on September 15, 2009, Appellants request that we rehear our decision in the opinion dated July 22, 2009, wherein we affirmed both rejections of the claims on appeal rejected under 35 U.S.C. § 102.

At page six of the prior decision we observed a claim construction item of our analysis that the message processing method for execution in the preamble did not necessarily, positively recite in the body of the claim an actual execution of the method. We further observed that merely “halting” and “resuming” did not recite that the execution of the threads themselves is halted in one place and resumed in another as actually recited. It is speculative that the execution is halted with respect to the plurality of conversation threads and it is also speculative that the execution is resumed with respect to the same conversation threads.

Appellants’ reference to page 7 of the Brief, first paragraph, that the preamble was argued to us is misplaced since this portion of the Brief relates to the Summary of the Claimed Subject Matter. The absence of execution of anything in both Sudo and Bhanot was not presented to us as an argument beginning in the Argument’s portion of the Brief at page 10. Moreover, the term “execution” in the Preamble of representative claim 7 is not recited in the body of the claim and is not referred back to as recited in the body of this claim. In this Argument’s portion of the Brief, the Appellants did not argue that Sudo and Bhanot do not provide halting and resuming to the extent recited in the body of representative independent claim 7 on appeal.

The substance of the arguments beginning at page 10 of the Brief as to the both references relates to the alleged non existence of mobile agents and the alleged absence of control part that is capable of controlling a plurality of

conversation threads. Both of these claimed features were discussed in detail in our prior opinion beginning at page 6.

Our remarks with respect to the control part being recited as merely “capable of controlling” rather than actually positively stating that the control of the plurality of threads remain. The quoted portion relates to a future act that may never positively occur and is not recited to exist in the present tense. Nevertheless, we tailored our specific analysis with respect to Sudo and Bhanot forming an actual controlling function of a plurality of threads in the paragraph bridging pages 7 and 8. We did not and do not presently consider “capable of controlling” a limitation that distinguishes over the functionality of both of these references.

Lastly, the bulk of our analysis dealt with the issue of what comprises a “mobile agent.” The term is actually passively recited “in the message processor of a mobile agent” in representative independent claim 7 on appeal. The scope of meaning of this term Appellants intend for it is noted in detail in FF 1. Our FF 2 with respect to Sudo and FF3 with respect to Bhanot indicated from an artisan’s perspective that the teachings of these references were consistent with what Appellants have regarded as broadly as the term of art is to encompass.

In view of foregoing, Appellants' Request for Rehearing is granted to the extent that we have reviewed our findings, but is denied as to make any change therein.

Appeal 2008-000843
Application 09/832,488

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

DENIED

erc

Perman & Green, LLP
99 Hawley Lane
Stratford, CT 06614